OPAP
FEB 22 2010
IAP17
PATENT & TRADEMARK OFFICE

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-09)
Approved for use through 07/31/2012. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) SON-3123	
	Application Number 10/531,950-Conf. #8804	Filed April 19, 2005
	First Named Inventor Kenichiro Aridome et al.	
	Art Unit 2621	Examiner J. J. Atala

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant /inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [x] attorney or agent of record. Registration number 40,290
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____

Signature

Christopher M. Tobin
Typed or printed name

(202) 955-3750
Telephone number

February 22, 2010
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

[X] *Total of 1 forms are submitted.

OPAP IAP17 FEB 22 2010 PATENT & TRADEMARK OFFICE

Docket No.: SON-3123
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Design Application of:
Kenichiro Aridome et al.

Application No.: 10/531,950 Confirmation No.: 8804

Filed: April 19, 2005 Art Unit: 2621

For: ENCODING CONTROLLING APPARATUS AND ENCODING SYSTEM Examiner: J. J. Atala

REQUEST FOR PRE-APPEAL BRIEF PANEL REVIEW OF FINAL REJECTION

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

This request for Pre-Appeal Panel Review is in response to the Final Office Action dated November 25, 2009. Appellants have concurrently filed a Notice of Appeal regarding all outstanding grounds of rejection and will file an Appeal Brief in due course. However, it is anticipated that Panel Review will obviate the need for the filing of a Brief.

I. The Final Office Action improperly rejects claims 1-10 under 35 U.S.C. § 103(a) as being unpatentable over Kelly et al (U.S. 6,952,521, hereinafter referred to as "Kelly '521") in view of Brodersen et al (U.S. 7,200,836, hereinafter referred to as "Brodersen '836").

Kelly '521 ***fails*** to disclose, teach, or suggest "*offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter; recording mode determining means for determining whether a*

seamless connection is possible between the preceding chapter and the following chapter in order to set an initial value of said offset depending on an outcome of the determination."

Moreover, Kelly '521 ***fails*** to disclose, teach, or suggest "*offset updating means for updating said offset in keeping with progress in encoding said video signal and said audio signal; and recording controlling means for giving an instruction either to start or to stop the encoding of said video signal and said audio signal in accordance with said offset.*"

However, the Office Action alleges these features can be found in col. 14, lines 15-20 and col. 12, line 63 to col. 12, line 4. This is wholly inaccurate.

Kelly '521 relates to methods and apparatuses for the editing and subsequent playback of edited audio/video data, and to edited recordings made by such methods and apparatuses. In particular, Kelly '521 discloses a means for producing an edited MPEG audio/video stream from first and second streams recorded in a transport-stream format normally intended for broadcast purposes. A bridge sequence is generated which recodes data from both of the original streams, in the region of the edit point. Padding packets are inserted in the elementary streams to adjust a continuity counter values so as to allow continuous decoding across the join between bridge sequence and second sequence proper. The packets are constrained to certain types of coded pictures, and offset between time-bases is adjusted to avoid buffer overflow.

In contrast, Applicant's claimed invention eliminates divergences between audio and video data during encoding rather than merely attempting to equalize video data temporally with the corresponding audio data on an averaging basis to produce an apparatus for seamlessly connecting chapters.

Col. 14, lines 15-20 of Kelly '521 states:

> The audio frames that are presented with video frames are not aligned in the multiplex. Typically the audio that corresponds to the video comes later in the multiplex than the video. However, in general the audio can be up to one second before or one second after the corresponding video in the multiplex.

The Office Action alleges that the above sections of Kelly '521 describes altering the audio from the video a few seconds prior or after the video for synchronization and thus read on the

offset holding means of Applicant's claim 1. This is simply not the case. There is ***no mention*** of offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter in Kelly '521.

Col. 12, line 63 to col. 12, line 4 of Kelly '521 states:

> Audio frames and video pictures having the same presentation time stamp PTS are those which are to be presented simultaneously at the output of the decoder. On the other hand, there is great freedom in the scheduling of packets of data from the different elementary streams, such that audio and video access units having the same PTS value can arrive in the transport stream TS up to one second apart.

The Office Action alleges the above section shows the importance of scheduling that allows for the audio to lag seconds of the video stream and thereby encoding the stream. Though this may be true, which is not admitted, Kelly '521 ***fails to mention*** determining whether a seamless connection is possible between the preceding chapter and the following chapter in order to set an initial value of said offset depending on an outcome of the determination.

The Advisory Action alleges that in col. 14, lines 30+ of Kelly '521 discloses Applicant's offset holding means and corresponding features. Again this is inaccurate. The paragraphs that the Examiner is referring to disclose: the creating of simple edits, the playback of simple edits, ensures that no Buffer overflow and underflow happens as well as sending only decodable audio and video data. While this may include the determination of offsets, there is ***no mention*** of holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter. More importantly, there is ***no mention*** whatsoever of determining whether a seamless connection is possible between the preceding chapter and the following chapter in order to set an initial value of said offset depending on an outcome of the determination in Kelly '521.

In addition, the Office Action ***admits*** Kelly '521 ***fails*** to disclose, teach, or suggest "*recording mode determining means for determining whether a seamless connection is possible between the preceding chapter and the following chapter in order to set an initial value of said*

offset depending on an outcome of the determination," but alleges Brodersen '836 does. Again this is inaccurate.

Brodersen '836 does not remedy the deficiencies of Kelly '521, as the various features recited above are also absent from Brodersen '836. For example, Applicant's claimed features of "*offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter; recording mode determining means for determining whether a seamless connection is possible between the preceding chapter and the following chapter in order to set an initial value of said offset depending on an outcome of the determination,*" are neither disclosed nor suggested by Brodersen '836.

Brodersen '836 relates generally to mass data storage and retrieval, and more particularly to apparatus and methods for authoring a digital versatile disk. A DVD authoring system in a processor-based system removes an author from consideration of the DVD Specification during authoring. The authoring system provides an authoring engine having an interactive graphical authoring interface, a data management engine, an emulator, a compiler, a multiplexer and a simulator. Using summary authoring data, the compiler builds a skeleton-form PGC layout structure comprising control PGC abstractions and router PGC abstractions. The compiler then resolves the PGC abstractions according to source-target connections. During playback on a DVD player, the PGC abstractions form elements in a connection-switching abstraction superstructure.

There is ***no mention*** of offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter in Brodersen '836.

Moreover, Brodersen '836 illustrates how an interface enables an author to assemble a movie title essentially removed from DVD programming specifications of the DVD Specification. Brodersen '836 further illustrates how an interface enables an author to assemble performance data and objects without consideration for structures, commands or ordered tasks imposed by DVD programming specifications.

There is ***no mention*** whatsoever of determining whether a seamless connection is possible between the preceding chapter and the following chapter in order to set an initial value of said offset depending on an outcome of the determination Brodersen '836.

Accordingly, Appellant respectfully requests reversal of the rejection of claims 1-10 under 35 U.S.C. § 103(a) as being unpatentable over Kelly '521 in view of Brodersen '836.

Dated: February 22, 2010

Respectfully submitted,

By _____
Christopher M. Tobin
Registration No.: 40,290
RADER, FISHMAN & GRAUER PLLC
Correspondence Customer Number: 23353
Attorney for Appellant